Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN ASTLE and WILLIAM POHLMAN

Appeal No. 1998-0622
Application No. 08/360,972

ON BRIEF

Before BARRETT, FLEMING, and LALL, Administrative Patent Judges

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 3 to 21, 24 to 40 and 42
to 44. Claims 1, 2, 22, 23 and 41 have been canceled.

The disclosed invention relates to a communication system supporting a real-time, interactive communications with a remote terminal. The communication system comprises a

plurality of terminals and a resource allocation device. The resource allocation device comprises a bandwidth allocation element for allocating bandwidths to a plurality of bandwidth request elements and a selecting element. The bandwidth request elements comprises at least an audio bandwidth request element and a video bandwidth request element. The audio bandwidth request element receives audio information from the terminals, generates and transmits an allocation request, and encodes the audio information according to the amount of bandwidth dynamically allocated by the bandwidth allocation element. The video bandwidth request element receives video information from the terminals, generates and transmits an allocation request, and encodes the video information according to the amount of bandwidth dynamically allocated by the bandwidth allocation element. The bandwidth allocation element receives the audio and video allocation requests and dynamically allocates in real-time a portion of the predetermined amount of the total bandwidth. The selection element is controlled

by the bandwidth allocation element to transmit the bit stream according to the allocatable bandwidth in a certain order. The information packets contained in the bit stream are selectively transmitted through a communication link. The following claim is reproduced to illustrate the invention further:

> 44. A resource allocation device which supports real-time, interactive communications between a local source and a remote device connected via a communication link, the resource allocation device comprising:
>
> a plurality of bandwidth request elements, wherein at least a first of said plurality of bandwidth request elements (i) receives information from the local source, (ii) generates and transmits an allocation request for a predetermined amount of a total bandwidth provided by the communication link and (iii) encodes said information according to a portion of said predetermined amount of said total bandwidth granted by a bandwidth allocation element;
>
> said bandwidth allocation element coupled to said plurality of bandwidth request elements, said bandwidth allocation element receives said allocation request and dynamically allocates said portion of said predetermined amount of said total bandwidth; and
>
> a selecting element coupled to said bandwidth allocation element and said plurality of bandwidth request elements, said selecting element receives said encoded information from said first bandwidth request element and a control signal from said bandwidth allocation element to cause said first bandwidth request element to selectively transmit

said encoded information and other encoded information provided thereto through said communication link to the remote device.

The examiner relies upon the following references:

Hayano et al. (Hayano)	5,132,966	Jul. 21, 1992
Buhrke et al. (Buhrke)	5,231,631	Jul. 27, 1993
Caci	5,392,223 (filed Jul. 29, 1992)	Feb. 21, 1995

Claims 3 to 21, 24 to 36, and 44 stand rejected under 35 U.S.C. § 103 as being unpatentable over Buhrke and Caci.

Claims 37, 38, 42 and 43 stand rejected under 35 U.S.C. § 103 as being unpatentable Caci in view of Hayano.

Claims 39 and 40 stand rejected under 35 U.S.C. § 103 as being unpatentable over Caci, Hayano and Buhrke.

Rather than repeat the arguments of appellants and the examiner, we make reference to the final rejection[1], the

[1] An amendment after final rejection was filed as paper no. 9. The examiner approved the amendment and it was entered into the record, see paper 10. Another amendment after final rejection was filed along with the brief as paper no. 16. However, we have been unable to locate this amendment and there does not appear to be anything in the record to indicate that paper no. 16 was accompanied by an amendment. The examiner is advised to verify the existence or non-existence of the amendment which is numbered as paper no. 16 in the record. For the purpose of this decision, the claims are being considered subsequent to the entry of amendment C, paper no. 9.

answer[2] and the brief[3] for the respective details thereof.

OPINION

We have considered the rejections advanced by the examiner and the supporting arguments. We have, likewise, reviewed the appellants' arguments set forth in the principal brief.

We reverse.

In our analysis, we are guided by the general proposition that in an appeal involving a rejection under 35 U.S.C. § 103, an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the applicant to overcome the prima

[2] An examiner's answer was filed as paper no. 18 responding to the principal brief, however, the examiner did not list any references relied upon in the answer, see page 3 of the answer. A corrected supplemental examiner's answer was filed as paper no. 20 correcting the oversight in the prior examiner's answer listing the references relied upon. The corrected examiner's answer still responds to the principal brief as did the prior answer. Therefore, it is the corrected examiner's answer, paper no. 20, which is being considered in this decision.

[3] The principal brief was filed on April 2, 1997 as paper no. 13. However, the claims in the attached appendix contained incorrect numbering of the claims. Therefore, another brief was filed as paper no. 17 on August 1, 1997 containing the correct numbering of the claims on appeal. Other than that, the appeal brief filed on August 1, 1997, is the same as the principal brief filed as paper no. 13. It is paper no. 13 brief which is being considered for this decision since the examiner has written her examiner's answer responding to that brief.

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with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). We are further guided by the precedent of our reviewing court that the limitations from the disclosure are not

to be imported into the claims. In re Lundberg, 244 F.2d 543, 113 USPQ 530 (CCPA 1957); In re Queener, 796 F.2d 461, 230 USPQ 438 (Fed. Cir. 1986). We also note that the arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192(a) and (c); In re Baxter Travenol

Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobviousness distinctions over the prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967)("This court has uniformly followed the sound rule that an issue raised below which is not argued in that court, even of it has been properly brought here by reason of appeal is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.").

With the above guidelines we proceed with the analysis of the three combinations of the references below.

Buhrke and Caci

The examiner rejects claims 3 to 21, 24 to 36, and 44 under this combination of references at pages 4 to 6 of the examiner's

answer. After discussing in detail the references individually, the examiner concludes, id. at page 6, that

"[i]t would have been obvious . . . to modify the function of allocating bandwidth as disclosed by Buhrke et al. With encoding and compressing the data prior to transfer depending on the allocated requested bandwidth as disclosed by Caci to achieve bandwidth efficiency . . . ." Appellants argue at length against the references to Buhrke and to Caci at pages 6 to 10 of the brief and conclude, id. at page 10, that "[t]hus, neither Buhrke nor Caci discloses a resource allocation device that (1) dynamically allocates requested bandwidths according to bandwidths availability for real-time interactive communications, (ii) encodes the information according to the dynamically allocated bandwidth, and (iii) selectively transmits the encoded information." We agree with the appellants' position. The examiner has not shown how or where in Buhrke, or Caci, or in the combination, the request elements recited in these claims and illustrated in Figure 4 of the specification are to be found. Thus, we are of the opinion that the examiner has not met her burden of establishing a prima

facie case of obviousness to meet these claims. Therefore, we do not sustain the obviousness rejection of these claims over Buhrke and Caci.

Caci and Hayano

The examiner rejects claims 37, 38, 42 and 43 under this combination at pages 6 to 8 of the examiner's answer. The examiner asserts, id. at page 7, that "[i]t would have been obvious . . . to modify the bandwidth allocation system of a communication processor as disclosed by Caci with bandwidth allocation system based on priority as disclosed by Hayano et al. to achieve high bandwidth efficiency . . . ." Appellants argue, brief at page 10, that Caci and Hayano "do not teach, disclose or suggest: (i)dynamically allocating a selected amount of bandwidth, (ii) encoding the information according to a portion of a predetermined bandwidth, (iii) selectively transmitting the
encoded information, and (iv) a priority parameter indicating urgency in receiving a dynamically allocated amount of bandwidth." We are persuaded by the appellants' arguments. We note that Caci does not disclose, as the examiner admits,

any priority attached to the request messages. The examiner uses

Hayano as a teaching for supplying the priority to the communication signals. However, Hayano simply discloses the teaching of assigning of a priority level to a packet of information in a network. Hayano does not disclose a method wherein a priority level is to be used in a video conferencing network of the type shown by Caci. There is no teaching in Hayano how a priority level is attached to a request message depending on the available bandwidth, for the purposes of video conferencing on an ISDN line. In our view, the examiner has not established a prima facie case of obviousness to meet the recited limitations. Therefore, we do not sustain the obviousness rejection of claims 37, 38, 42 and 43 over Caci and Hayano.

Caci, Hayano and Buhrke

Claims 39 and 40 are rejected under this combination of references. However, since none of the references show or disclose any teaching of the recited limitations discussed

above,

claims 39 and 40 which depend on claim 37, are also not met by this combination. Therefore, we do not sustain the obviousness rejection of claims 39 and 40, over Caci, Hayano and Buhrke.

The decision of the examiner rejecting claims 3 to 21, 24 to 40, and 42 to 44 under 35 U.S.C. § 103 is reversed.

REVERSED

LEE E. BARRETT Administrative Patent Judge	)	
MICHAEL R. FLEMING Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES

)
PARSHOTAM S. LALL)
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